

Message Text

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PAGE 01 STATE 186649

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8/24/74 EXT. 22621

APPROVED BY ARA - MR. SHLAUDEMAN

EB/IFD - MR. BOEKER (DRAFT)

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R 241646Z AUG 74

FM SECSTATE WASHDC

TO AMEMBASSY GEORGETOWN

C O N F I D E N T I A L STATE 186649

EXDIS

E.O. 11652: GDS

TAGS: ENIV, EMIN, GY

SUBJECT: REYNOLDS NEGOTIATIONS

REF: GEORGETOWN 1507, GEORGETOWN 1473

1. WE ASSUME PROPOSAL OUTLINED REFTEL WOULD INCLUDE IMMEDIATE MOVE TO DISCUSS TAKE-OVER ARRANGEMENTS AFTER REYNOLDS HAD AGREED TO A JAMAICAN FORMULA LEVEL FOR REMAINDER OF CY 1974 AND THAT PAYMENT OF DOLS 4 MILLION IN TAXES FOR LAST FOUR MONTHS OF YEAR WOULD BE USED BY GOG IN FINAL FINANCIAL SETTLEMENT FOR TAKE-OVER. UNLESS THERE IS SOME ELEMENT OF WHICH WE ARE UNAWARE BELIEVE IT WOULD BE HIGHLY UNLIKELY THAT REYNOLDS WOULD AGREE TO PARTICIPATE IN SUCH AN ARRANGEMENT. THROUGHOUT OUR CONTACTS WITH REYNOLDS THEY HAVE MADE IT CLEAR THAT THEIR OFFER TO MAKE HIGHER PAYMENTS TO GOG REQUIRED A GUARANTY OF TENURE FOR A STATED
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PAGE 02 STATE 186649

PERIOD (FIVE YEARS IS THE TERM MOST OFTEN CITED). THEY HAVE

ALSO INDICATED THAT REYNOLDS MAJOR CONCERN IS THE EFFECT OF ANY SETTLEMENT ARRIVED AT IN GUYANA ON THEIR MORE IMPORTANT NEGOTIATIONS IN JAMAICA. GIVEN THESE TWO FACTORS WE FEEL IT WOULD BE HIGHLY UNLIKELY THAT REYNOLDS WOULD BE RECEPTIVE TO ARRANGEMENT OUTLINED REFTEL A.

2. PARA 3 OF REF B INDICATES THAT WE MIGHT HELPFULLY CLARIFY OUR POSITION ON RETROACTIVE TAXES. THE BASIC POINT IS THAT WHEN A STATE EXERCISES ITS RIGHT UNDER INTERNATIONAL LAW TO NATIONALIZE PROPERTY IT ASSUMES A CORRELATIVE DUTY TO PAY PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION. THIS DUTY CANNOT BE AVOIDED THROUGH THE ENACTMENT OF AN ARBITRARY RETROACTIVE TAX. ONE COULD ALWAYS CHOOSE A RETROACTIVE TAX RATE AND PRIOR TIME PERIOD SUFFICIENT TO COME UP WITH ANY OFFSETTING FIGURE, HOWEVER LARGE. THUS, THE LEGAL REQUIREMENT OF PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION CANNOT BE AVOIDED THROUGH ABUSE OF RETROACTIVE TAX. IT APPEARS TO US THAT THE GOG DOES NOT FULLY UNDERSTAND THIS POINT. IN A MODE OF YOUR CHOOSING, YOU SHOULD MAKE THIS CLEAR TO THE GUYANESE. KISSINGER

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